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 VAN DYKE, GARDNER, LINN AND BURKHART, LLP
 2851 CHARLEVOIX DRIVE, S.E.
 P.O. BOX 888695
 GRAND RAPIDS, MI 49588-8695

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| EXAMINER |
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GREENHUT, CHARLES N

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| ART UNIT | PAPER NUMBER |
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3652

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/04/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/796,816

Applicant(s)

SAUNDERS ET AL.

Examiner

Charles N. Greenhut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-16, 18-28, 30-45 and 47-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-16, 18-28, 30-45 and 47-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

I Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 35-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. Amendments to the parent claim 30 including limitations directed toward the identifier render dependent claims 35-36 unclear.

1.1(a) The limitations of claim 35, by the present amendment, have been incorporated into parent claim 30. Claim 35 therefore fails to further limit the parent claim 30.

1.1(b) Claim 36 recites an indicator for identifying the given tote, where this is apparently the function of the identifier in the parent claim. Clarification is required.

II Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 12-14, 16, 18-23, 53-56 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over LEWIS (US 2002/0087231 A1) in view of SPINDLER (US 5,509,538 A).

1.1. With respect to claim(s) 12-14, 16, 18-23, 53-56 LEWIS discloses providing products in a first and second row (14) of flow racks [0022], having picking locations (Fig. 3), forming an aisle between the picking locations, providing access across the aisle to each picking location, aligning a first and second group of three (e.g., A1-3) totes (24) at each row (12), indicating products to be picked for each group (Fig. 4), wherein indicating comprises providing lights (42) associated with the products and actuating the light when a product is to be picked [0026], indicating further comprising marking each tote with an identifier (e.g., "alpha" [0025]), displaying said identifier (Fig. 5) near the product or products to be picked (Fig. 4/5 – 60/70), controller (50) and pick confirmation actuator (63). LEWIS fails to show indexing the totes. SPINDLER teaches indexing, repeating and replenishing totes. It would have been obvious to one having ordinary skill in the art to index and replenish the totes in order to ensure segregation of orders or sub-orders.

2. Claim(s) 15, 24-28, 30-45, 47-52, 57 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over LEWIS in view of SPINDLER and further in view of LANGLEY (US 3,247,929 A)

2.1. With respect to claim(s) 24-28, 30-40, 57 LEWIS discloses means for supporting products in a first and second row (14) of flow racks [0022], having picking locations (Fig. 3), forming an aisle between the picking locations, providing access across the aisle to each picking location, means for aligning a first and second group of totes (24) at each row (12), means for indicating products to be picked for each group (Fig. 4), lights (42) associated with the products and means for actuating the light when a product is to be picked [0026], an identifier (e.g., "alpha" [0025]) on each tote, a display displaying said identifier (Fig. 5) near the product or products to be picked (Fig. 4/5 – 60/70), controller (50), and pick confirmation actuator (63). LEWIS fails to show means for indexing the totes. SPINDLER teaches a conveyor means for aligning, indexing and replenishing totes. It would have been obvious to one having ordinary skill in the art to employ the conveyor to align, index and replenish the totes in order to ensure segregation of orders or sub-orders. LEWIS fails to teach that a conveyor is associated with each rack. It is well known that a conveyor may be associated with each rack, as demonstrated, for example by LEWIS (Fig. 5 – Col. 8 Li. 55 et seq.). It would have been obvious to one having ordinary skill in the art to modify LEWIS in view of SPINDLER with a conveyor supplied to each rack in order to decrease the distance from the pick site to the put site, thereby saving time.

2.2. With respect to claim(s) 15, 41-45, 47-52 LEWIS discloses providing products in a first and second row (14) of flow racks [0022], having picking locations (Fig. 3), forming an aisle between the picking locations, providing access across the aisle to each picking location, aligning a first and second group of totes (24) at each row (12), indicating products to be picked for each group (Fig. 4), wherein indicating comprises providing lights (42) associated with the products and actuating the light when a product is to be picked [0026], indicating further comprising marking each tote with an identifier (e.g., "alpha" [0025]), displaying said identifier (Fig. 5) near the product or products to be picked (Fig. 4/5 – 60/70), controller (50), and pick confirmation actuator (63). LEWIS fails to show indexing the totes. SPINDLER teaches indexing and replenishing totes. It would have been obvious to one having ordinary skill in the art to index and replenish the totes in order to ensure segregation of orders or sub-orders. LEWIS fails to teach that a conveyor is associated with each rack. It is well known that a conveyor may be associated with each rack, as demonstrated, for example by LEWIS (Fig. 5 – Col. 8 Li. 55 et seq.). It would have been obvious to one having ordinary skill in the art to modify LEWIS in view of SPINDLER with a conveyor supplied to each rack in order to decrease the distance from the pick site to the put site, thereby saving time.

III Response to Applicant's Arguments

Applicant's arguments entered 2/16/07 have been fully considered.

1. Applicant argues that claims 12, 24, 30, 41, 53 and 57 are not anticipated by SPINDLER because of the limitations inserted by the present amendment pertaining to the identifier location. This argument is

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persuasive and the previous rejection over SPINDLER is, therefore, withdrawn. Upon further consideration, however, a new grounds for rejection is presented above.

IV Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP §.706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
3. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 6:30am - 3:00pm EST.
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG


PATRICK MACKEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600